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IN THE
COURT OF COMMON PLEAS No. 1,
FOR THE COUNTY OF PHILADELPHIA.

SITTING IN EQUITY.

BETWEEN

ROBERT MANNERS,
Plaintiff.

AND

HENRY J. WILLIAMS AND THE
LIBRARY COMPANY OF
PHILADELPHIA, A BODY POLITIC
AND CORPORATE IN THE LAW.
Defendants.

MARCH TERM, 1878.

No.

To the Honorable the Judges of said Court:—

Robert Manners, of London, England, on behalf of himself and all others, heirs-at-law of James Rush, deceased, who, contributing to the expenses of this suit, may become parties hereto; brings this his bill against Henry J. Williams, and against "The Library Company of Philadelphia," a body politic and corporate in the law; and thereupon your orator complains and says:—

I.—That Dr. James Rush died, in the City of Philadelphia, in the month of May, A. D. 1869, without issue, and not leaving a widow, father or mother to survive him.

II.—That said decedent was, at the time of his death, seised and possessed of a large amount of real and personal property.

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III.—That your orator is the son of Thomas Manners and Mary Rush Manners, his wife; said Mary Rush Manners having been a sister of said James Rush, deceased, and having intermarried with said Thomas Manners, they had issue the said plaintiff, Robert Manners; and the said Mary Rush Manners afterwards died, November 2, 1849; so that your orator is a nephew of said James Rush, deceased, and as his heir-at-law, is entitled to his proper share of all estate and property whereof the said decedent died seised and intestate.

IV.—That on the thirty-first day of May, A. D., 1869, without notice to, or knowledge of, the complainant, certain writings, purporting to be the last Will and Testament, and Codicils thereto, of the said Dr. James Rush, deceased, were admitted to probate by the Register of Wills in and for the City and County of Philadelphia, and Letters Testamentary were granted thereon to Henry J. Williams, Esq., one of the defendants in this action. A copy of the said writings is hereto attached, and marked "Exhibit A."

V.—That in the attempted disposition of the residue of the estate of said decedent, the said writings, alleged to be the last Will and Codicils of said Dr. James Rush, deceased, are so uncertain as to be incapable of any clear meaning—are full of contradictory and repugnant clauses, and are impossible of execution; and, if possible of being carried out, the execution thereof would be contrary to sound morals and to religion, and would be opposed to the policy of the law.

VI.—"The Library Company of Philadelphia" have not finally accepted the devise contained in said alleged Will and Codicils, and have declined to accept the same upon the trusts and conditions in said writings mentioned.

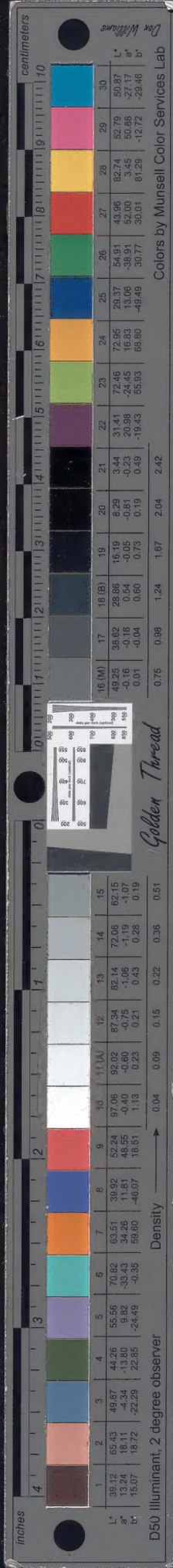
And your orator charges that the said "The Library Company of Philadelphia" have now no power to accept the devise contained in said alleged Will and Codicils, and

that were it otherwise, they are incompetent in law to act as trustees under said alleged Will and Codicils.

VII.—And your orator further shews, that the said James Rush, in the first so-called Codicil to his alleged Will, provided for the contingency of a refusal by the said Library Company to accept the alleged devise, in the manner and in the words following, to wit:—

“If the Library Company should omit or decline to accept
 “my residuary estate, on the terms and conditions in my Will
 “and Codicils contained, or fail to comply with any of the pre-
 “liminary stipulations and directions therein mentioned, then
 “I give and devise the whole residue of my estate, real and
 “personal, whatsoever and wheresoever the same may be, after
 “paying and securing all annuities, bequests, legacies and de-
 “vises, other than those to the said Library Company, in this
 “or any future Codicil contained, unto Henry J. Williams, my
 “executor, in my said last Will named, his heirs, executors
 “and administrators, in trust therewith, to found and endow a
 “public library, entirely distinct from, and independent of,
 “‘The Philadelphia Library Company,’ to be named and called
 “the ‘Ridgway Library,’ under the rules, regulations, con-
 “ditions and stipulations in my said last Will and the Codicils
 “thereto expressed and contained.”

VIII.—And your orator further shows that it is impossible to carry out and execute the aforesaid attempted devise for the foundation of the Ridgway Library, for the following, among other reasons, that whilst the said alleged first Codicil left some residue, after the completion of the building, for the purchase of books, by directing:—“that the greater part of the estate may be spent in completing the new library building,” the so-called additional Codicil (executed upwards of eleven months after the first), took the residue entirely away, and left no funds whatever for the foundation of a library, as appears



in the words following, to wit:—"I hereby authorize and "direct my said executor to expend the *whole remainder* of my "estate in the purchase of a lot, and the erection of a library "building, construction of book cases, etc., leaving the said "Company only an income sufficient to defray the *ordinary and "strictly appropriate expenses* of such an institution."

And your orator shows that as "*the whole remainder of the estate*" has been thus required to be expended in the lot, building, and book-cases, before the conveyance thereof to the said Library Company, and as no fund has been provided for the foundation of the Ridgway Library, in said building, the whole scheme of the said James Rush has become, and is, inoperative and impracticable, and it is impossible to carry out the same.

And your orator charges that for this reason the said lot and building, and the contents thereof, and said residue of said estate, have become and are the property of your orator and the other heirs-at-law of the said James Rush, deceased, and that the said Henry J. Williams is seised thereof to their use.

IX.—And your orator further shows that it is impossible to carry out and execute the aforesaid attempted devise for the foundation of the Ridgway Library, as set forth in paragraph VII, of this bill, for the additional reason, that, as appears by the extract from said alleged first Codicil (already quoted in said VIIth paragraph), in the event of the non-acceptance, by said "Library Company of Philadelphia," of said attempted devise, then "*the whole residue* of the estate, real and personal, 'is devised' "*unto Henry J. Williams*, the executor, * * his heirs, "executors and administrators, in trust therewith, to found and "endow a public library * * to be named * * the "Ridgway Library, under the rules, regulations, conditions "and stipulations in said last Will, and the Codicils thereto, "expressed and contained."

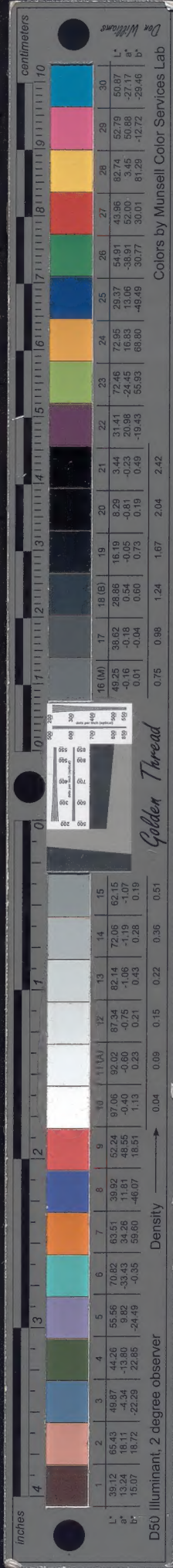
And your orator avers that said scheme is wholly impracti-

cable, and that it is impossible to execute the same, because no one save the said Henry J. Williams is authorized to execute it, and that no provision is made for the execution thereof after his death. That said alleged Will and Codicils contain numerous provisions, such as the following, to wit, that "*respectable persons depositing an amount and paying an annual sum, to be fixed by the Board of Managers, are to have the full and free use of the library;*" and further it is provided that "schemers" and "consequential spendthrifts" are to be "*excluded from the direction;*" and further it is provided that "*all of the works*" of the said James Rush, shall, "*for the next half century,*" be published at intervals of "*every ten years, and earlier and oftener, if called for,*" in editions "*of five hundred copies,*" and it is in the said alleged Will and Codicils "*imperatively required* that the said editions *be published exactly as they are left.*" And the said alleged Will and Codicils contain divers other minute, particular, and strict provisions respecting the practical management of the said Library, requiring for their due execution and performance, the personal care, skill, taste, judgment and discretion of the said Henry J. Williams.

And your orator charges that these and other provisions of said alleged Will and Codicils cannot be performed, or enforced, after the death of the said Henry J. Williams, by any administrator *de bonis non* of the said James Rush, deceased; nor can the discretion thus personally vested in the said Henry J. Williams be performed by any other person.

And your orator charges that for this reason the said residue of said estate has become and is the property of your orator and the other heirs-at-law of the said James Rush, deceased, and that the said Henry J. Williams is holder thereof to their use.

X.—And your orator further shows that, to carry out and execute the aforesaid attempted devise for the foundation of the Ridgway Library, as set forth in paragraph VII, of this



Bill, would be contrary to every principle of good morals and of religion, and would be opposed to the policy of the law; and, in support of this averment, your orator shows that the said Ridgway Library is to be conducted "*under the rules, regulations, conditions and stipulations in said*" alleged "*last Will and the Codicils thereto expressed and contained;*" one of which said rules is in these words:—"I do not wish that any work should be excluded from the library on account of its difference from the ordinary and conventional opinions on the subjects of science, government, theology, morals, or medicine, provided it contains neither ribaldry nor indecency."

As no work is to be excluded on these grounds from said Library, works must be admitted to its shelves which inculcate rebellion, treason, atheism, deism, materialism, or which uphold polygamy and socialism, and which contain the numerous arguments now in existence, or which may hereafter be framed, against religion, and against sound morals and the good order and well being of society.

A library thus conducted, with the admission of such works thus commanded and required, would, as your orator believes and avers, speedily become a fountain for the corruption of pure religion, sound morals, and good order.

And your orator charges that, for this reason, the said residue of said estate has become and is the property of your orator and the other heirs-at-law of the said James Rush, deceased, and that the said Henry J. Williams is holder thereof to their use.

XI.—That the writing dated the eighteenth day of April, A. D. 1867, purporting to be a Codicil to the alleged Will of said Dr. James Rush, provides only for the purchase of a lot and the erection of a library building and book cases, for which purpose (after providing for certain legacies) the whole remainder of the estate is devised, said building and book

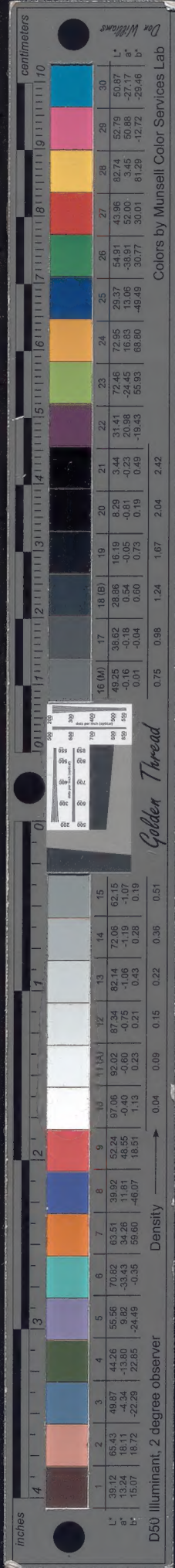
cases to be for the use of "The Library Company of Philadelphia."

And your orator avers that said alleged Codicil (if valid) is a revocation of the writings dated the twenty-sixth day of February, A. D. 1860, and May 16, 1866, alleged to be the Will and Codicil of Dr. James Rush, deceased. That no disposition is made in said alleged Codicil of April 18, 1867, of the estate of said decedent, nor any expression given of the will of said decedent, in case the said "The Library Company of Philadelphia" should not accept the same.

And your orator avers that, there being no intention expressed in said writing of April 18, 1867, as to the effect of a failure of the scheme sought to be established in said alleged Will, and no disposition having been made of the estate, whereof he, the said Dr. James Rush, died seised, in the event of "The Library Company of Philadelphia" not accepting the same upon the terms and conditions in said writings expressed, upon the non-acceptance of said devise by said Library Company, and for the reasons hereinbefore stated among others, the said estate of the said Dr. James Rush hath become, and is, vested in your orator and others, heirs-at-law of said decedent.

XII.—That within one calendar month, prior to his decease, the said Dr. James Rush purchased a lot of ground, situate on the southeast corner of Broad and Christian streets, in the City of Philadelphia, which said lot was purchased by him, and was subsequently conveyed for a charitable use, as set forth in the trusts and conditions contained in the aforesaid writings, alleged to be his last Will and Codicils.

Your orator avers that the contract for the purchase of the said lot is in the possession, and under the control of, Henry J. Williams, Esq., one of the defendants, and its exact date cannot therefore be given by your orator, and that he needs discovery thereof.



Your orator further avers that said transaction is void, by reason of the purchase for the use of said charity having been made within one calendar month of the decease of the said decedent, contrary to the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, entitled, "An Act Relating to Corporations and to Estates, held for Corporate, Religious, and Charitable uses," approved the twenty-sixth day of April, A. D., 1855. And your orator therefore charges that, upon the death of Dr. James Rush, the title to said lot vested in your orator and others, the heirs-at-law of said decedent.

XIII.—And your orator avers that in said writing of April 18, 1867, purporting to be a Codicil to the last Will of Dr. James Rush, no disposition is made of the residuary estate not required for paying annuities, and which may remain after the erection of said building and book-cases, nor of the increase of said estate, after the death of the said Dr. James Rush, which said increase and surplus are vested in your orator and others, heirs-at-law of said decedent.

XIV.—That the searches, briefs-of-titles, deeds, and title papers to the ground rents and real estate of which the said Dr. James Rush died seised, are in the exclusive possession and control of the said Henry J. Williams, Esq., one of the defendants, whereof your orator needs discovery.

XV.—That the said Henry J. Williams, Esq., claims to hold the personal property, and to have title to the ground rents and real estate of which the said Dr. James Rush died seised, by reason of said writings, purporting to be the Will and Codicils of said decedent.

And your orator avers that no title passed to the defendants, or either of them, under said writings, and that the admission of the same to probate, and the putting of them on record, cast a cloud upon the title of your orator, as an heir-

at-law of said decedent, which in justice and equity ought to be removed therefrom.

XVI.—That the said Henry J. Williams, Esq., is collecting the rents of the real estate and the interest on the ground rents and moneys belonging to your orators, and refuses to account to your orators for the same.

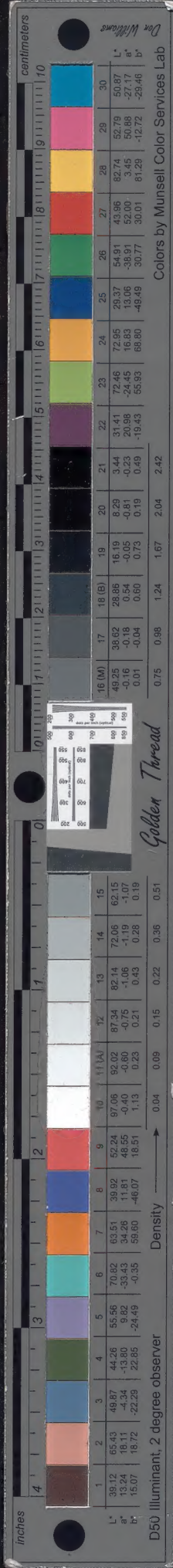
XVII.—That the said Dr. James Rush died seised of a large number of houses and lots in the said City of Philadelphia, and ground rents upon numerous properties, to determine the right to which in the Courts-at-law would require a multiplicity of suits.

XVIII.—That it is the intention of the said Henry J. Williams, Esq., to sell the real estate and ground rents of which the said Dr. James Rush died seised, and use the proceeds thereof, together with the personal estate of said decedent, in the foundation of a library without the consent of your orator, and contrary to his wishes.

XIX.—That your orator complains herein only against the said Henry J. Williams, Esq., and "The Library Company of Philadelphia," because the bequests set forth in "Exhibit A," to the heirs-at-law, are less than their shares of said estate under the intestate laws of this Commonwealth; and also for the reason that the said heirs at law may become plaintiffs herein, if they see fit to do so. The other persons named in the said writings (to wit, the legatees who are not next of kin of said decedent), are unknown to your orators, and they do not intend to make their legacies the subject of dispute.

And your orator charges that by reason of the premises, the said Henry J. Williams now holds the estate of said decedent, and the increase thereof, as the trustee for your orator, and refuses to account to your orator therefor.

Wherefore your orator needs equitable relief, and he prays:—



First.—That the title of the residue of the real and personal estate, of which the deceased, Dr. James Rush, died seised, after payment of the debts, and of the individual bequests and annuities, may be declared to be in your orator, according to his share thereof, under the Intestate Laws of Pennsylvania.

Second.—That so far as any attempted disposition of the residue of said estate is concerned, the said writings, alleged to be the Will and Codicils of said Dr. James Rush, may be declared to be so uncertain as to be incapable of any clear meaning, and impossible of execution, and that if possible of being carried out, the execution thereof may be declared to be contrary to sound morals, and to religion, and opposed to the policy of the law.

Third.—That the purchase of the lot on the corner of Broad and Christian streets, for the use of "The Library Company of Philadelphia" may be declared void, by reason of being contrary to the provisions of the Act of Assembly of this Commonwealth, approved twenty-sixth April, 1855, and that the title to said lot may be declared to be in your orator and the other heirs at law of said Dr. James Rush, deceased.

Fourth.—That the writings, dated eighteenth April, 1867, as set forth in "Exhibit A," may be declared to be a revocation of the writings dated February 26, 1860, and May 16, 1866, alleged to be the Will and Codicils of said Dr. James Rush.

Fifth.—That the said "The Library Company of Philadelphia" may be declared to have no interest in the estate of said Dr. James Rush, deceased. That the estate claimed to have been devised to said Company in said writings, may be decreed to be vested in your orator according to his share thereof, under the Intestate Laws of Pennsylvania, and

that the said Henry J. Williams be decreed to be the trustee thereof for your orator, and the other heirs at law of said Dr. James Rush, deceased.

Sixth.—That the residuary estate and increase of the whole estate since the death of Dr. James Rush, may be declared to be in your orator, according to his share thereof, under the Intestate Laws of Pennsylvania, and that the said Henry J. Williams, Esq., be decreed to be the trustee thereof for your orator and the other heirs at law of the said Dr. James Rush, deceased, and to account therefor accordingly.

Seventh.—That the said Henry J. Williams, Esq., may be compelled to make a full and true disclosure and discovery of the real estate, and where the same is situated, and of all ground rents, of which the said Dr. James Rush died seised, and may be compelled to account to your orator for the personal estate, rents of the real estate, and interest on the ground rents and mortgages collected and received by him, and for all other receipts by him, from the real and personal estate and ground rents, of which the said Dr. James Rush died seised.

Eighth.—That the said Henry J. Williams, Esq., may be decreed to execute and deliver a release to your orator of any interest he may claim in the real estate and ground rents of which the said Dr. James Rush died seised, for the purpose of removing any cloud which may exist upon the title of your orator by reason of the admission of said writings to probate; and that he may be decreed to deliver to your orator the searches, briefs-of-title, deeds, ground rent deeds, mortgages, and all papers relating to the estate of which said Dr. James Rush died seised.

Ninth.—That the said Henry J. Williams, Esq., may be restrained by preliminary, and hereafter by perpetual, injunc-



tion, from selling or attempting to sell any portion of the real estate and ground rents of which the said Dr. James Rush died seised ; and from applying and using the same and his personal estate in the foundation of a library.

Tenth.—That your orator may have such other relief as the nature of the case may require.

FRANCIS E. BREWSTER,
F. CARROLL BREWSTER,
WILLIAM A. PORTER,
Solicitors for Complainants.

COPY OF ALLEGED WILL AND CODICILS REFERRED TO IN
THE FOREGOING BILL AS

“Exhibit A.”

WILL OF JAMES RUSH, M. D.

Be it remembered:—That I, JAMES RUSH, of the City of Philadelphia, M. D., do make this my last Will and Testament, hereby revoking all others by me heretofore made, in manner following—that is to say :—

I will and direct that all my just debts, which will be found very few in number, and insignificant in amount, shall be paid by my executor as soon as possible.

It is my intention, by a Codicil, or Codicils, to this my Will, to give considerable legacies, annuities and devises to different persons, but as I desire to take some time for reflection on this subject, and as I have made up my mind as to



the disposition of my residuary estate after the payment of these legacies, annuities, and devises; now, therefore, I do hereby give, bequeath, and devise my whole estate, real and personal, legal and equitable, whatsoever and wheresoever the same may be, unto my brother-in-law, HENRY J. WILLIAMS, of the City of Philadelphia, his heirs and assigns, to be held by him for and upon the following trusts and purposes, and for and upon no other use, trust, or purpose whatever—that is to say:—

In trust, after paying, providing for, and complying with all legacies, annuities, gifts, bequests, and devises, declarations, and intentions which may be contained and expressed in any Codicil or Codicils to this, my last Will and Testament, which I may hereafter make, (to be signed by me at the end thereof,) whether the same be formally drawn or not; to have and to hold the whole residue and remainder of my estate, real and personal, whatsoever and wheresoever the same may be, for the following uses and purposes, *viz*:—

In trust, to select and purchase a lot of ground, not less than one hundred and fifty feet square, situate between Fourth and Fifteenth and Spruce and Race streets, in the City of Philadelphia, and thereon to erect a fire-proof building sufficiently large to accommodate and contain all the books of "The Library Company of Philadelphia," (whose library is now at the corner of Fifth and Library streets,) and to provide for its future extension, according to plans, directions, and specifications, which I shall hereafter make or give; but if I should not make or leave any such plans, directions, or specifications, then to erect the same according to his best judgment, and to the views which I have expressed to him. It is my wish that this building should be exceedingly sub-

MANNERS
vs.
 WILLIAMS, *et al.*

C. P., No. 1.
 DEC. T., 1877.
 No. 1,319.
 IN EQUITY.

And now, March 28, 1878, by leave of the Court, the plaintiff amends the Bill by adding to paragraph XIII., (*Page 8*.) the following words:—

“Said increase and surplus now amounting to a sum exceeding one hundred thousand dollars; as to all of which your orator charges that the said Dr. James Rush died intestate.”

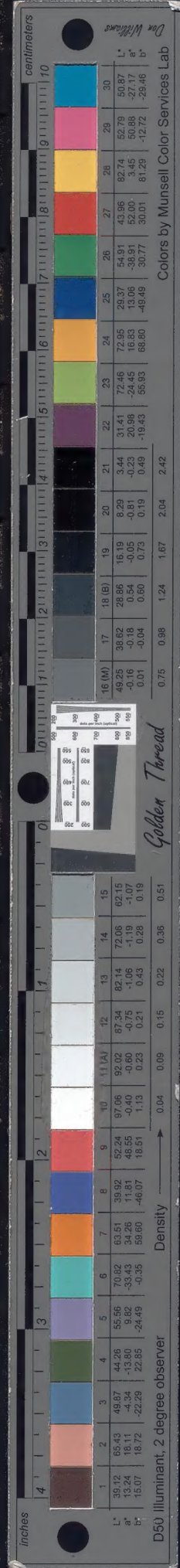


MANNERS,	}	C. P. No. 1.
vs.		DEC. T., 1877.
		No. 1,319.
WILLIAMS, <i>et al.</i>		IN EQUITY.

And now, April 5, 1878, the plaintiff files this additional Amendment to his Bill, by adding to paragraph X, (page 6,) the following words:—

And the plaintiff charges that the works directed by the said Dr. James Rush to be published “every ten years, and earlier and oftener, if called for,” in the paper writing dated April 18, 1867, contain infidel and atheistical sentiments, teachings and arguments, and that said works deny the truths of the Christian religion, and of revelation, and the existence of a God; and the plaintiff charges that the effect of carrying out and executing said trust would be the propagation of infidel and atheistical doctrines, and would be contrary to good morals and to law.

And your orator charges that, for this reason, the residue of said estate has become, and is, the property of your orator and the other heirs-at-law of the said James Rush, deceased, and that the said Henry J. Williams is holder thereof, to their use.



C. F. No. 1
Feb. 1, 1871
No. 1, 1871
In Equity

Plaintiff

vs.

Defendant

And now April 4, 1871, the plaintiff files the following
Amendment to his bill by adding to paragraph 2 (page 2)
the following words:

"And the plaintiff charges that the words inserted by the
and the James Smith to be published 'every day' and
rather and object it called for 'in the paper a long time'
April 12, 1867, contain insinuations and malicious
teachings and arguments and that said words deny the truth
of the Christian religion and of patriotism and the existence
of a God; and the plaintiff charges that the effect of carrying
out and executing said words would be the propagation of in-
fidel and atheistical doctrines and would be contrary to good
morals and to law."

And now further charges that for the reason the teaching
of said words has become, and is the property of your court
and the other parties to the said James Smith, deceased,
and that the said Henry J. Williams is liable therefor to
them and